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THE REQUEST FROM THE CHAIRMEN OF THE JUDICIARY COMMITTEE AS TO THE REFERENDUM TO MASSACHUSETTS LAWYERS ON THE INTEGRATION OF THE BAR AS A SELF-GOVERNING BODY

In order to ascertain the opinion of the bar on the subject of integration, the Massachusetts Bar Association and the Law Society of Massachusetts are asking all the lawyers of the Commonwealth to express themselves by means of a ballot. A memorandum signed by the presidents of the two associations with an accompanying postcard ballot was mailed about March 6th to all lawyers whose names appear in the *Lawyers' Diary*. The memorandum is printed on the following page with the request of the Chairmen of the Judiciary Committee.

If you have not already done so, read the memorandum and then send in your vote. Whether the bar should be integrated or not as a self-governing body is a matter of supreme importance to every lawyer. Surely, you will have an opinion on that vital matter after reading the explanation about it in the memorandum.

The form of ballot to be mailed to Joseph Wiggin, 27 State Street, Boston, reads as follows:

1. I { favor / do not favor } an integrated bar.

2. I am a member of the following bar associations:

Suggestions?

Name and Address .....

As we go to press, answers have come from lawyers of whom about 1,400 vote in favor and about 700 against.

As all the reports on the judicial system for the past twenty years or so have been reprinted in the QUARTERLY to keep the bench and bar informed, the report of the special commission on juvenile courts is reprinted in this issue.

A REQUEST FROM THE CHAIRMEN OF THE JUDICIARY COMMITTEE OF THE LEGISLATURE

To All Members of the Bar:

We hope that you will read the following memorandum which has been submitted to us and send your answers to the questions on the postcard for the information and assistance of the Legislature.

John D. Mackay, *Senate Chairman.*
Arthur I. Burgess, *House Chairman.*
} Committee on Judiciary.

Memorandum for All Members of the Bar

For several years the subject of bar integration has received increasing attention in Massachusetts. The legislature has called for the opinion of the Judicial Council, which has reported in favor of integration in its 16th Report, Public Document 144, which will be found reprinted in *Mass. Law Quart.* for Jan. 1941 (No. 1, pp. 48-54) or which may be obtained by writing to Public Document Room, State House. Other studies have been made. Until, however, the considered opinion of a majority of the lawyers of the Commonwealth is established in favor of bar integration it would be idle to attempt it in any form.

The Massachusetts Bar Association and the Law Society of Massachusetts are taking a poll of the lawyers of Massachusetts to ascertain the opinion of the bar.

THIS IS ONE OF THE MOST IMPORTANT PROBLEMS THAT YOU, A LAWYER, WILL EVER BE CALLED UPON TO CONSIDER. IN YOUR OWN INTEREST YOU SHOULD STUDY THE SUBJECT AND THEN REGISTER YOUR OPINION ON THE ENCLOSED POSTCARD BALLOT.

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1. What an Integrated Bar Is.

A state or integrated bar is a self-governing association composed of all practicing lawyers in the state. Membership requires the payment of an annual fee, usually not more than $5.00, and is automatic for those engaged in active practice. A lawyer may not practice unless he pays his dues. An integrated bar does not differ greatly from a bar association, save only in the important feature that membership is automatic and all-inclusive. It applies to lawyers already admitted and to those later admitted.

2. What an Integrated Bar Is Not.

It is not regimentation, for the integrated bar governs itself. It in no wise affects existing standards of ethics nor established practice and procedure. It is a method of making lawyers as a body more useful to themselves, to the public and to the courts.

3. Manner of Integration.

The bar has been integrated in three ways:

A. By legislative act; some acts going into detail and others being merely broad enabling acts leaving details to the bar or the court.

B. By legislative action requesting the court to integrate the bar by rule.

C. By the court by rule upon petition by interested bodies and without legislative intervention.

As time has elapsed, the first method has been less used and most recent integrations have been under the second or third.

4. What Jurisdictions Have Adopted Integration.

The movement started around 1914 and the first bar to become integrated was that of North Dakota. Now the following 24 jurisdictions have integrated bars:

1921	North Dakota	1933	Arizona
1923	Alabama	1934	Kentucky
	Idaho		Louisiana (Repealed)
1925	New Mexico		Missouri (By rule for some purposes)
1927	California		
1929	Nevada	1935	Michigan
	Oklahoma (Repealed)		Oregon
1930	Mississippi	1937	Nebraska
1931	South Dakota	1938	Arkansas
	Utah		Virginia
1932	Puerto Rico	1939	Texas
1933	Washington		Oklahoma (By rule)
	North Carolina		Wyoming
		1940	Louisiana (By rule)

No bar which has once been integrated has permanently reverted to its former status. In both Oklahoma and Louisiana, the bars of which were originally integrated by legislative act, the acts were repealed for political reasons, but both were later again integrated under rule of court.

5. What Jurisdictions have considered, but failed to adopt, Integration?

Seven jurisdictions have seriously considered, but have failed to adopt, integration:

Montana	Committees of each state bar association petitioned the court for integration by rule, but the court (in each case in 1939) dismissed the petition. (In Iowa after a poll with only a slight majority in favor.)
New Jersey and Iowa	
New York	A bill introduced in the legislature was defeated (1925).

Ohio and Pennsylvania	In each state (Pennsylvania 1938 and Ohio 1939) a majority of lawyers polled voted adversely.
Wisconsin	A bill passed the legislature in 1939 but was vetoed.

6. Reasons for Integration.

A. Every lawyer recognizes that there are many fields in which the bar could be benefited and its relations with the courts and with the public improved. Individual lawyers unaided cannot accomplish these desired results and such as have been attained have been due to the activity of the state and local bar associations. Such associations have the disadvantage of rarely representing a majority of the lawyers for whom they purport to speak. This not only weakens the force of their efforts, but in some cases may work unfairness to the unrepresented members of the bar. An integrated bar avoids both these evils.

B. Many improvements beneficial to the bar are impossible because of the expense involved in securing them and the inadequacy of the funds which existing bar associations can devote to that purpose.

C. The relations of the bar with the public are not only unsatisfactory, but increasingly unsatisfactory. An integrated bar could officially defend itself against unfair criticisms and could take affirmative steps to remove the causes and misunderstandings behind the complaints.

7. Objections to Integration.

A. Regimentation is the objection most frequently asserted. The argument to the contrary is that regimentation does not exist. The bar once organized governs itself and may do so by secret ballot of its members by mail or otherwise.

B. It is urged that existing bar associations will be driven out of existence or seriously hurt. The almost unanimous trend of opinion in states that have adopted integration is that local associations have been helped, rather than hurt. A summary of these opinions may be found on pages 27-47 of a report, without recommendation, on Bar Integration by a Committee of the Bar Association of the City of Boston, which appears in the *Bar Bulletin* of May 15, 1940 (No. 161). This report may be found in your county law library and with the secretary of your local bar association.

C. It is sometimes suggested that the bar of the large cities will control the bar of the state. This possibility can be averted by having the governing body of the integrated bar representative of localities and locally elected.

D. It is also suggested that the government of the integrated bar will eventually come into the hands of selfish or politically-

minded lawyers. If this occurred, the bar would have only itself to blame, and the history in other states has shown that its likelihood is remote.

8. How Massachusetts stands on Bar Integration.

In 1937, the Legislature requested the Judicial Council to report upon the subject, and the Council, in its 13th Report, made the following recommendation:

> "It seems to us that a resolve requesting the court to act is the proper legislative proceeding under the constitution, and accordingly we recommend the following —
>
> "*Resolved*, in order to promote the public interest in the administration of justice, in the interpretation of the laws, and in the bar of the Commonwealth as a body of officers of the court, the Supreme Judicial Court is hereby requested to provide by rules, for the organization of all present and future members of the bar of this Commonwealth, as a self-governing body subject to the constitutional authority and rules of said court, to be known as the Bar of Massachusetts."

This recommendation is repeated in its 16th Report now before the Legislature. (See pp. 48-54.)

In 1938 and again in November, 1940, the Executive Committee of the Massachusetts Bar Association voted to support the recommendation of the Judicial Council, and similar votes were passed by the Berkshire County and Cambridge Bar Associations and by the Council of the Middlesex Bar Association. On February 20, 1941 the Fall River Bar Association voted to endorse the resolve above quoted.

9. How do you stand on Bar Integration?

No change of such importance should be adopted without the approval of a substantial majority of the bar, and to that end this summary is being sent to every Massachusetts lawyer whose address can be ascertained.

The Joint Committee on Judiciary held a hearing on the above resolve and bills touching this question on February 19th. That Committee adjourned the hearing to April 1st to give time for this poll. Your vote on the enclosed card or by letter will be included in the tabulation to be filed with the committee. How **you** vote will not be made known unless you request it.

DO NOT FAIL TO VOTE AND MAIL YOUR BALLOT BEFORE MARCH 20th, 1941 TO THE ADDRESS BELOW.

JOSEPH WIGGIN
President Massachusetts Bar Association
27 STATE ST., BOSTON

ARTHUR L. ENO
President Law Society of Massachusetts

FEBRUARY, 1941

AN ACT CONCERNING JUDICIAL DETERMINATION OF RIGHTS TO EXERCISE POWERS OF SALE TO FORECLOSE REAL ESTATE MORTGAGES IN WHICH SOLDIERS OR SAILORS MAY BE INTERESTED.

(St. 1941 c. 25. In effect February 21, 1941)

WHEREAS, Numerous soldiers and sailors absent from the Commonwealth on military service of the United States own mortgaged real estate and there is serious danger that mortgages on their properties may be foreclosed without adequate notice to them, and it is necessary for their protection that this act immediately go into operation, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

SECTION 1. In any proceeding in equity, for authority to exercise a power of sale contained in a mortgage of real estate, brought because of an Act of Congress known as the Soldiers' and Sailors' Civil Relief Act of 1940, or any amendments thereto hereafter enacted, notice may be issued in substantially the following form by the court in which such proceeding is pending, returnable on any convenient date, irrespective of the return days otherwise prescribed by law or rule, and requiring all appearances and answers to be filed on or before the return day:

COMMONWEALTH OF MASSACHUSETTS

.....Court

..... ss. In Equity

To (insert the names of all defendants named in the bill) and to all whom it may concern.

.....has filed with said court a bill in equity for authority to exercise the power of sale contained in a mortgage of real estate situated (insert name of city or town and also, if stated in mortgage, the street and number) given by (insert names of parties, date and reference to record).

If you are entitled to the benefits of the Soldiers' and Sailors' Civil Relief Act of 1940 and you object to the foreclosure of said mortgage, you or your attorney should file a written appearance and answer in said court at.....on or before ....., or you may be forever barred
(RETURN DAY)
from claiming that a foreclosure sale made under such authority is invalid under said act.

WITNESS....., Esquire, Judge of said Court, this.....day of....., 19....

.....

The recording of a copy of said notice in the registry of deeds of the district where the real estate lies, the publication of a copy thereof once not less than twenty-one days before the return day in a newspaper designated by the court, and the mailing of a copy thereof by registered mail not less than fourteen days before the return day to each defendant named in the bill, shall be sufficient service of said notice, unless the court otherwise orders.

SECTION 2. A sale made pursuant to authority granted in such proceedings may be approved by the court but not until after the expiration of the period for appeal from the order authorizing the sale. There shall be no appeal from or review of such approval.

The period of thirty days within which a copy of the notice of sale and an affidavit are required to be recorded by section fifteen of chapter two hundred and forty-four of the General Laws shall, in case such a proceeding has been had, be computed from the time the court approves the sale rather than from the time of the sale as provided in said section.

A copy of the order authorizing the sale and the approval thereof may be recorded in the registry of deeds of the district where the real estate lies, and shall be conclusive evidence of compliance with the provisions of said Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto, insofar as the court has power to determine the same, as against all persons, except that such copy shall not be conclusive evidence of such compliance against persons whose interests appeared of record prior to the recording of the notice of said proceeding unless they were named as defendants or had notice of said proceeding.

Approved February 21, 1941.

NATIONAL SAFETY COUNCIL
(Incorporated)
20 NORTH WACKER DRIVE
CHICAGO

January 15, 1941.

To Secretaries, State Bar Associations.

Gentlemen:

The 1940 report of the Committee on Tests for Intoxication has just come off the press, and I am glad to send you the enclosed copy.

As the use of chemical tests for intoxication becomes more frequent, the question of compulsion in the taking of specimens for these tests will undoubtedly become quite important. The section of this report dealing with compulsory tests and with legislation thus will be of interest to many of the members of your association.

In listing this report in your publications, it will be quite all right to mention that *members of the legal profession can obtain single copies at no charge by writing to us.*

We shall be glad to furnish further information or to be of assistance in any other way.

Sincerely yours,

DONALD S. BERRY, *Secretary,*
Committee on Tests for Intoxication.

THE NEW ACT AS TO APPORTIONMENT OF COMPENSATION OF FIDUCIARIES

(St. 1941 c. 36, approved February 27, 1941, in effect 30 days thereafter)

G. L. (Ter. Ed.) c. 206 § 16 is amended by adding the following sentence:

> "Such compensation may be apportioned between principal and income as the court may determine."

FOREIGN LAW IN MASSACHUSETTS

The act concerning the proof of statutes of other jurisdictions, prepared by the National Commissioners on Uniform State Laws, was submitted to the Legislature as *Senate No. 544* of 1941. This act, which has been adopted in a number of states, was given leave to withdraw because it is not needed in Massachusetts. According to the handbook of the National Conference, they submitted their act to the states in 1920. By St. 1926, Chap. 168 (now G. L. Ter. Ed. Chap. 233, § 70), Massachusetts adopted a much broader statute as follows:

> "The courts shall take judicial notice of the law of the United States or of any state, territory or dependency thereof or of a foreign country whenever the same shall be material."

This act of 1926 was the first recommendation of the Judicial Council adopted by the Legislature. It is one of the broadest statutes as to judicial notice in the country, and it applies both to statutes and to the common law of any jurisdiction. The reasons for it were stated in the first Report of the Council for 1925 (pp. 36–39) — copies of which may be obtained in the Public Document Room in the State House (reprint MASS. LAW QUART. for Nov. 1925). A later history of the opinions under the act appears in XXIV MASS. LAW QUART. No. 4 (for Oct.–Dec. 1939, pp. 8–11).

FIFTH SUPPLEMENT OF NOTES TO THE SIXTH EDITION OF CROCKER'S "NOTES ON COMMON FORMS" PREPARED FOR THE MASSACHUSETTS CONVEYANCERS' ASSOCIATION.

These notes were prepared for the Massachusetts Conveyancers' Association for its members under the terms of the Samuel T. Harris Memorial Fund, and are here included by permission of the Association.

The first four sets of these notes were printed in the MASSACHUSETTS LAW QUARTERLY for January-March and July-September, 1939, January-March and July-September, 1940. The notes may be readily copied into the book, as indicated, for future reference.

NOTES BY R. D. SWAIM, EDITOR, SIXTH EDITION OF CROCKER'S "NOTES ON COMMON FORMS"

The following notes cover Massachusetts decisions in the Advance Sheets for 1940, pages 1022 through 2044, and various Land Court decisions noted in the *Banker and Tradesman*. At the left will be found the Section in Crocker to which each case may be cited.

Section

178 *Zoning.*

Mandamus by adjoining owner who objected to a permit issued by the building commissioner. *Petros* v. *Superintendent of Buildings of Lynn*, 1940 Adv. Sh. 1133.

178 *Zoning — Adjoining owner's Remedies — Purposes of Zoning.*

Tranfaglia v. *Building Commissioner of Winchester*, 1940 Adv. Sh. 1243.

838 *Trustee — power to sell does not include power to give away.*

Clune v. *Norton*, 1940 Adv. Sh. 1101.

213 *Partition — Agreement by tenant in common not to.*

For unreasonable time unenforceable. *Roberts* v. *Jones*, 1940 Adv. Sh. 2001.

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375 *Mortgage — Liability for Deficiency.*

Law as to effect of grantee's assumption of the mortgage and dealings of mortgagee with the grantee and with the property and as to the right of mortgagee to pay taxes and add to the debt restated. *Lynn Five Cents Sav. Bank* v. *Portnoy*, 1940 Adv. Sh. 1203.

366 *Mortgage — deficiency suit on N. Y. bond and N. Y. moratorium laws.*

U. S. B. & M. Liquidation Corporation v. *Hilton*, 1940 Adv. Sh. 1559.

Section

366 375 529 *Mortgage — Deficiency suit — Taxes.*

Foreclosure sale "subject to taxes" — no recovery for such taxes. *Natick Five Cents Savings Bank* v. *Bailey*, 1940 Adv. Sh. 1995.

213 678 *Co-tenants — Ratification.*

Right of one tenant in common to bind his co-tenants by instrument under seal and ratification and authorization discussed. *Moran* v. *Manning*, 1940 Adv. Sh. 1183.

744 *"At any time" may mean "from time to time". Successive executions of a power.*

State Street Trust Co. v. *Crocker*, 1940 Adv. Sh. 1001.

153 *Easement — overloading — use of way — "drift" way.*

See discussion in *Swensen* v. *Marino*, 1940 Adv. Sh. 1369.

69 *Constructive trust.*

Found in connection with a purchase on the facts in the case. *Kolasinski* v. *Paczkowski*, 1940 Adv. Sh. 1521.

810 829 *Heirs — husband and wife as heirs of each other and the $5,000 clause.*

Discussion of and history of the statute. See *Seavey* v. *O'Brien*, 1940 Adv. Sh. 1439.

534 *Mortgagee — Liability for Conversion after foreclosure.*

What a mortgagee may do with worthless-looking stuff found on the premises. *Row* v. *Home Savings Bank*, 1940 Adv. Sh. 1467.

398 536 *Mortgagee — Operating after default without formal entry — Liability for negligence of agent.*

Skolnick v. *East Boston Savings Bank*, 1940 Adv. Sh. 1473.

416 157 *Way — Mortgagee's rights to — Abandonment.*

See *Tourles* v. *Grogan*, 1940 Adv. Sh. 1517.

40 157 *Railroad taking — abandonment.*

See *Kelley et al.* Land Court 17375
Cleary " " 17457
26 B. T. L. 17.

162 *Trespass through draining on to land. Prescriptive Right.*

Fortier v. *H. P. Hood & Sons Inc.*, 1940 Adv. Sh. 1761.

Section

105 *Building as real or personal property.*

106

765

Meeker v. *Oszust*, 1940 Adv. Sh. 1837. But see *Franklin* v. *Metcalfe*, 1940 Adv. Sh. 1861 as to taxation of land and building as a unit.

707 *"Building" in a zoning law.*

Wilbur v. *Newton*, 1940 Adv. Sh. 1637.

217 *Tenancy at will by partners — withdrawal of partner.*

Marr v. *Doran*, 1940 Adv. Sh. 1631.

829 *Issue.*

Definition of and discussion of meaning in light of provisions of the will in question. *Boston Safe Dep. & Trust Co.* v. *Park*, 1940 Adv. Sh. 1719.

262 *Estoppel by deed.*

Principle restated. *Horowitz* v. *Peoples Savings Bank*, 1940 Adv. Sh. 1645.

152 *Trespass — Encroaching wharf — Laches not found.*

Westhampton Reservoir Recreation Corporation v. *Hodder*, 1940 Adv. Sh. 1755.

877 *Tax Title Foreclosure.*

Petition to vacate, decree not allowed on the facts. Foreclosure in Land Court in nature of proceedings in rem. *Bucher* v. *Randolph*, 1940 Adv. Sh. 1867.

105 *Tenant's Improvements as taxable.*

Center Investment Co. 43 B. T. A. No. 9.

ROGER D. SWAIM.

MORE ABOUT THE UNCHRISTIAN NUISANCE OF FEDERAL OATH REQUIREMENTS

The following editorial appeared in the *Boston Globe* of March 8, 1941:

"Of the 15,000,000 persons whose Federal income tax returns must be in the hands of collectors before the deadline, perhaps 12,000,000, perhaps more, will be at some trouble to get their signatures sworn to before a notary.

"Massachusetts discovered some time ago that there is no necessity for notarization on an income tax return. Legislation has made the signer subject to the penalties of perjury should he have made a false return. New York state has now fallen into line, eliminating this ancient rite from the income tax.

"If Congress should have the wisdom to follow the lead of Massachusetts and New York the Ides of March in 1942 would be relieved of an unnecessary annoyance."

Senator Walsh introduced a bill in Congress some years ago to abate the nuisance. To make an oath a perfunctory nuisance by excessive multiplicity tends to weaken the sanction of all oaths, even those in court, where they are still of some importance.

F. W. G.

"FROM WRIT TO RESCRIPT"

This volume recently published by Little Brown & Co. for the Bar Association of the City of Boston is, for several reasons, one of the most important law books that has appeared in Massachusetts. It is

> ". . . designed to supply something that for the most part has gone from our midst . . . the personal contact formerly had between the experienced members of the bar and the young men who entered their offices . . . to learn at the veteran's feet and profit by his example. . . ."

Many years ago, the late Uriel H. Crocker wrote a little pamphlet entitled "History of a Title." It was the practice in, at least, one office to require every young man entering the office to read it in order to scare him and focus his mind on the importance of observing details. For the same reason, we advise every young lawyer to read this new book from cover to cover. It should be required reading for every applicant for admission to the bar, and should supplement any law school course on Massachusetts practice.

The book contains the lectures, delivered in 1938 and 1939 under the auspices of the Bar Association of the City of Boston, in support of the national program of the American Bar Association recommending advanced professional education for members of the bar. This course, conducted by twenty-eight active and experienced practitioners and judges, including five justices of the Supreme Judicial Court, was awarded honorable mention by the American Bar Association. The course was attended by over 900 lawyers when the lectures were delivered. The scope of the lectures appears from the following titles:

CONFERENCES WITH CLIENTS
Edward F. McClennen, Daniel J. Lyne

ASCERTAINING AND ANALYSING THE FACTS
Louis C. Doyle, Elias Field

PLEADINGS AND PRACTICE
Lothrop Withington, John T. Noonan

INTERROGATORIES AND ANSWERS
Hon. Thomas F. Quinn, John V. Spalding

PREPARATION FOR TRIAL
Hon. James J. Ronan, Neil Leonard

APPLIED ETHICS
Hon. Louis S. Cox, Willard B. Luther

COURTROOM CONDUCT
Hon. Hugh D. McLellan, Hon. F. Delano Putnam

DIRECT EXAMINATION
Hon. Frederic H. Chase, John L. Hall

CROSS EXAMINATION
Damon E. Hall, Robert T. Bushnell, Philip A. Hendrick

REQUESTS FOR RULINGS
Hon. Henry T. Lummus, Hon. Jacob J. Kaplan
JURY ARGUMENTS Charles B. Rugg
APPEALS Hon. Joseph T. Zottoli, Harold S. Davis
BRIEFS ON APPEAL
William H. Hitchcock, Hon. Stanley E. Qua
ARGUMENTS ON APPEAL
Robert G. Dodge, Hon. Fred T. Field, Chief Justice of Massachusetts

Aside from the importance of the book to young men entering the profession, it gives a sort of bird's-eye view of the operation of the machinery of justice in Massachusetts, and various side lights, which may cause reflection, resulting in suggestions for improvement. Our first impression is that such chapters as those of Messrs. Withington and Noonan, on pleading, and that of Mr. Harold Davis, on appeals, may provide fertile ground for study by the bench and bar in connection with the exercise of the rule-making function. The same may be true of some of the other chapters.

Space will not allow extended discussion at this time, but various questions suggested by the lectures may be discussed in later issues.

F. W. G.

THE FIRST ANNUAL CONFERENCE OF THE FIRST CIRCUIT

By the Act of Congress of August 7th, 1939, it was provided that:

> "A conference shall be held annually in each judicial circuit, at such time and place, as shall be designated by the senior circuit judge thereof, which conference shall be composed of circuit and district judges in such circuit who reside within the continental United States, with participation in such conference on the part of members of the bar under rules to be prescribed by the circuit courts of appeals, for the purpose of considering the state of the business of the courts and advising ways and means of improving the administration of justice within the circuit."

Pursuant to the mandate of Congress the Revised Rules of the Circuit Court of Appeals for the First Circuit provided that the members of the conference from the bar shall be composed of the following:

> "(a) Presidents of the state bar associations of the states and territory within the circuit, and two delegates from each such association, to be appointed by the president thereof.

THE JUDGES OF THE UNITED STATES IN THE FIRST JUDICIAL CIRCUIT
In conference November 26, 1940

Seated about table (left to right) are: Judge Calvert Magruder, Massachusetts Senior Circuit Judge; Henry P. Chandler, director administrative office of United States courts, Washington; Judge John A. Peters, Maine; Judge John C. Mahoney, Rhode Island Circuit Judge; Judge George C. Sweeney, Massachusetts; Judge John P. Hartigan, Rhode Island; Judge Francis J. W. Ford, Massachusetts; Arthur I. Charron, clerk, Circuit Court of Appeals; Judge George F. Morris, New Hampshire; Judge Elisha H. Brewster, Massachusetts; Judge Hugh D. McLellan, Massachusetts, and Will Shafroth, administrative office, United States courts.

"(b) All United States attorneys of the circuit, and the Attorney General of Puerto Rico or a representative designated by him.

"(c) A representative of each grade A law school within the circuit.

"(d) Two lawyers to be appointed annually by each circuit judge, and one lawyer by each district judge as members of the conference for that year.

"(e) The chairmen of the committees on rules and procedure appointed by the various district courts within the circuit, and one other member of each of such committees designated by the respective chairmen thereof."

This Act of Congress is the direct result of the nation-wide growth of the Judicial Council idea for the continuous study of judicial administration. As pointed out by Judge Parker, of the Fourth Circuit Court of Appeals, in the *Journal of the American Judicature Society* for June, 1939 (page 5), the conferences began about 1931 in the Sixth, Eighth and Fourth Circuits. Those conferences consisted only of judges, and carried into the circuits the idea of the annual Conference of Senior Circuit Judges, in Washington, established about ten years earlier at the suggestion of Chief Justice Taft.

In 1931, following a suggestion of Chief Justice Hughes at the opening of the meeting of the American Law Institute of that year, a Committee of the National Conference of Bar Delegates suggested a plan for circuit or district committees of members of the Federal bar to confer with the judges and thus to bring into the conferences, representatives of the clients of the nation. This plan was approved by the National Conference of Senior Circuit Judges and by the American Bar Association (see editorial in A. B. A. Journal for November, 1931, pp. 738–9 where the story appears). In October, 1932, a letter was sent by the committee to every Federal judge in the country calling attention to the plan, and the local Federal Rules Committees began to come into existence. (See Report of Committee on Rule-Making etc. to the conference of Bar Delegates in October, 1932).*

In 1933, as Judge Parker points out, the first conference was held in the Fourth Circuit, at which members of the bar attended.

The result of all this was that when Congress passed the rule-making bill in 1934, a number of local committees were already in existence, and the idea of co-operation between the bench and bar developed into a nation-wide practice for the assistance of the Advisory Committee, which formulated the new Federal rules. Following this, and the active interest shown in the Fourth Circuit Conferences, the Act of Congress was passed in 1939 providing that such conferences should be held annually in all of the ten circuits. The first conference in the First Circuit was held on November 26th and 27th, 1940.

*Reprinted in 18 Mass. Law Quart. February, 1933, 54; see also the final report of the committee in 1936 reprinted in Mass. Law Quart. for July, 1936.

An account of the proceedings will be found in 21 Boston University Law Review for January, 1941, which contains the addresses of Henry P. Chandler, Director of the Administrative Office of the United States Courts, Prof. Sheldon Glueck, Alexander Holtzoff, and Judge McLellan. We advise the reading of these addresses by those who wish to know what is going on in the profession.

In his "Foreword" Judge Magruder says: "While our experience with this initial conference suggests that some improvement can be made in the mechanics of the meeting, it was the general feeling that the conference was well worth-while and that as it develops in future years it will make very definite contributions to the better administration of justice in the circuit."

THE REGIONAL CONFERENCE OF BAR ASSOCIATION OFFICERS FROM SEVEN STATES

On Wednesday, January 15th, a conference of officers of state and local bar associations of the New England States and of New York, with officers of the American Bar Association, was held in Boston, for the discussion of the functions of the bar in connection with national defense, bar organization activities and court procedure and practice. The presiding officer was Burt J. Thompson, of Iowa, Chairman of the Committee on Bar Association Activities. At the luncheon, Philip J. Wickser, of Buffalo, member of the Board of Governors from the Second Circuit, presided, and an address was made on "Judicial Administration" by Arthur T. Vanderbilt, of New Jersey, former President of the American Bar Association. In the afternoon, Edmund R. Beckwith, of New York, Chairman of the Committee on National Defense, spoke on the work of that committee. The remainder of the time, both in the morning and in the afternoon, was devoted to reports and discussions of activities in the different states.

In the evening, there was a dinner at the Hotel Somerset for the attending delegates in honor of Jacob M. Lashly, of St. Louis, President of the American Bar Association. The dinner was under the auspices of the Massachusetts Bar Association, the Law Society of Massachusetts, and the Bar Association of the City of Boston. Joseph Wiggin, President of the Massachusetts Bar Association, presided, and Mr. Lashly spoke effectively along the lines of his article in the *American Bar Association Journal* for December, 1940.

This was the first of a series of similar conferences to be held throughout the country. It is gratifying to be able to report that the visitors were pleased with their reception here. An account of the conference appears in the *American Bar Association Journal* for February, 1941, pp. 68–69.

MORE ABOUT THE AMERICAN JUDICATURE SOCIETY AND ITS "JOURNAL"

"The Judicature Society endeavors to penetrate to the roots of the evils that afflict the administration of justice and to ascertain what means are best adapted to the improvement of the system of administration. There are common problems that must be solved and every community may be helped by the experience of others." — CHARLES E. HUGHES.

"I am glad to have an opportunity of testifying to the importance of the American Judicature Society for the improvement of the administration of justice in the United States. It has been behind every significant advance in judicial organization and procedure for a generation, and deserves hearty support by the profession." — ROSCOE POUND.

"The American Judicature Society has been the greatest single influence for progress in its field. The American Bar owes to the Society an immeasurable debt for its services in initiating systematic research in its field of judicial administration, in devising and advancing forward steps of an unprecedented nature, and of providing an educational periodical devoted exclusively to disseminating information in this vital field of reform."
— JOHN H. WIGMORE.

"All laymen and most lawyers and judges know that the administration of justice — the impersonal name that we choose to give to the service rendered to the people by lawyers and judges — is very much in need of improvement. The American Judicature Society, as a leader in the movement for such improvement, merits the support of every lawyer and of every judge."
— CHARLES A. BEARDSLEY.

The Society was incorporated in 1913 after a nation-wide survey of the administration of justice and the possibilities for its improvement. Its first important work was publication of a series of bulletins on fundamental operations in judicial administration. Its *Journal*, founded in 1917, is the only publication devoted exclusively to this field. Distributed free to all who wish to receive it, the *Journal* is one of the most widely-circulated legal periodicals in the country. It affords an interchange of experience and ideas between lawyers throughout the entire nation, and its twenty-three volumes constitute a library on judicial administration. Back numbers and an index are available.

The Judicature Society has received financial support at times from various sources, but its main reliance for income is on the dues of its members. It is hoped that a growing membership of lawyers, judges, law teachers and laymen will eventually enable it to perform its services independent of outside assistance.

If you wish to help the Society by paying annual dues of $5.00 you will help a professional undertaking that has demonstrated its usefulness *to you as a lawyer* in the past twenty-five years more than you realize. The February number of the *Journal* contains an article on *Stare Decisis* which may interest Massachusetts lawyers. Applications for membership should be sent to the Society at Ann Arbor, Michigan.

A PROPOSED UNNECESSARY CONSTITUTIONAL AMENDMENT

The Committee on Constitutional Law has reported "ought to pass" and the following amendment (House 165).

PROPOSED ARTICLE OF AMENDMENT

Article XLV of the amendments to the constitution is hereby amended by adding after the word "inhabitants," in the third and fourth lines, the words: *or are unable by reason of physical disability to cast their votes at the polling place in person*, so that the said article will read as follows: *Article XLV*. The general court shall have power to provide by law for voting by qualified voters of the commonwealth who, at the time of an election, are absent from the city or town of which they are inhabitants *or are unable by reason of physical disability to cast their votes at the polling place in person*, in the choice of any officer to be elected or upon any question submitted at such election.

We submit that the legislature already has the power specified in this proposal and suggest that an advisory opinion be obtained on this question before the people are asked to make unnecessary additions to the constitution. A constitution should not be filled up with statutory matter.

The forty-fifth amendment was adopted in 1917. It provides:

> "The General Court shall have power to provide by law for voting by qualified voters of the Commonwealth who, at the time of an election, are absent from the city or town of which they are inhabitants in the choice of an officer to be elected or upon any question submitted at such election."

In 1918, the sixty-first amendment was adopted. It provides:

> "The General Court shall have authority to provide for compulsory voting at elections, but the right of secret voting shall be preserved."

While compulsory voting does not seem likely in Massachusetts, in spite of the practice in Belgium which was referred to in the Debates of the Constitutional Convention of 1917–1918 (Vol. III), the power of the legislature to provide for it exists. In some of the speeches, the Belgian practice was described as providing "an inducement" or "an incentive" to voting. If the legislature has the power to compel an inhabitant to exercise the privilege of voting as the performance of a duty, by providing the "inducement" of some form of penalty for not voting, then surely the legislature must have the power, under the sixty-first amendment, to avoid the extreme of a penalty, and to provide the "inducement" by making it possible for a sick person to vote by sending him an absentee ballot. In other words, the broader power of inducement by compulsion must include the narrower power of inducement by opportunity.

This is not a *moot* question: A *pending* proposal for a constitutional amendment necessarily presents both "a solemn occasion" and "an important question of law" as to which each branch may require an opinion from the justices under Chapter III, Article II.

F. W. GRINNELL.

THE INITIAL QUESTION OF LAW ON EACH INITIATIVE PETITION

An initiative petition for a State Workmen's Compensation Insurance Fund was filed under the 48th Amendment and transmitted to the Clerk of the House by the Secretary of the Commonwealth. The House has adopted an order asking for an advisory opinion of the justices on certain "important questions of law" under the constitutional provision for such opinions. An editorial in the *Boston Herald* of March 13th suggests that this order of the House "will be interpreted by some as a scheme to delay action." Such a view of the matter would be mistaken.

In the case of an initiative petition, if it is a constitutional one, the measure, when transmitted to the Clerk of the House under the 48th Amendment, II § 4, "shall be deemed to be introducing and pending" and under III, § 1 "if introduced *into the General Court* . . . it shall be referred to a committee" for hearing etc., and under V § 1 "if introduced into the general court . . . a vote shall be taken . . . in both houses before the first Wednesday in June upon the enactment of such law in *the form in which it stands in the petition*." The Legislature cannot amend it in the slightest particular.

Obviously by *express* words an initiated measure transmitted is "introduced and pending" not merely in the House, but in both houses simultaneously for a required yea and nay vote in *each* after a committee hearing and report.

The first question arises in each house forthwith on transmission . . . is it a legal initiative which must be referred by each house to a committee and be voted on after report? If it is not, there is nothing to refer to a committee. That is an important question of law which arises forthwith in each house on every initiative petition.

Therefore, if there are serious doubts, either house (or both) may and should require an opinion. (See 271 Mass. at p. 584).

F. W. G.

A PROPOSED AMENDMENT TO THE FEDERAL CONSTITUTION TO LIMIT FEDERAL TAXATION

The following resolution (House 1003 now before the Committee on Constitutional Law) is an application to Congress under Article V of the United States Constitution, which provides, as an alternative method for proposing amendments, that "the Congress, . . . on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments," which shall be valid as part of the Constitution when ratified either by three-fourths of the legislatures of the

several states or by conventions in three-fourths thereof. Its purpose is, in brief, to limit federal taxes on income, gifts and estates to a maximum rate of 25 percent.

A similar measure (without the qualification in Section 4) was first introduced in several states in 1939, passed in *Wyoming* by both branches, in *Iowa* by the House, in *Wisconsin* by the Senate and in *Rhode Island* by the Senate. In 1940 the resolution passed in *Mississippi* by an almost unanimous vote, and in *Rhode Island,* with Section 4 included, by large majorities in both branches. In 1941 it has been passed in *Nevada* by the Senate by a unanimous vote, and in *Iowa* by the House by unanimous vote. It is said to have been favorably reported by seventeen state legislative committees.

This measure, either with or without Section 4, is reported to be now pending or about to be introduced in Maine; New Hampshire; Vermont; Massachusetts; Connecticut; New Jersey; Delaware; Maryland; North Carolina; South Carolina; Georgia; Florida; Indiana; Iowa; Colorado; Nevada; California; Washington and it will probably be introduced in a number of other states.

A brief by the American Taxpayers Association, Inc., Munsey Building, Washington, D.C., in support of the amendment has been filed with the committee.

HOUSE 1003

RESOLUTIONS MEMORIALIZING CONGRESS TO AMEND THE CONSTITUTION OF THE UNITED STATES RELATIVE TO TAXES ON INCOMES, INHERITANCES AND GIFTS.

Resolved, That application be and it hereby is made to the congress of the United States of America to call a convention for the purpose of proposing the following article as an amendment to the constitution of the United States:

"ARTICLE .

"*Section 1.* The sixteenth article on amendment to the constitution of the United States is hereby repealed.

"*Section 2.* The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration: Provided that in no case shall the maximum rate of tax exceed twenty-five per centum.

"*Section 3.* The maximum rate of any tax, duty, or excise which congress may lay and collect with respect to the devolution or transfer of property, or any interest therein, upon or in con-

templation of or intended to take effect in possession or enjoyment at or after death, or by way of gift, shall in no case exceed twenty-five per centum.

"*Section 4.* The limitations upon the rates of said taxes contained in sections two and three shall, however, be subject to the qualification that in the event of a war in which the United States is engaged creating a grave national emergency requiring such action to avoid national disaster, the congress by a vote of three-fourths of each house may for a period not exceeding one year increase beyond the limits above prescribed the maximum rate of any such tax upon income subsequently accruing or received or with respect to subsequent devolutions or transfers of property, with like power, while the United States is actively engaged in such war, to repeat such action as often as such emergency may require.

"*Section 5.* Sections one and two shall take effect at midnight on the thirty-first day of December following the ratification of this article. Nothing contained in this article shall affect the power of the United States after said date to collect any tax on incomes for any period ending on or prior to said thirty-first day of December laid in accordance with the terms of any law then in effect.

"*Section 6.* Section three shall take effect at midnight on the last day of the sixth month following the ratification of this article. Nothing contained in this article shall affect the power of the United States to collect any tax on any devolution or transfer occurring prior to the taking effect of section three, laid in accordance with the terms of any law then in effect." and be it further

Resolved, That the congress of the United States be, and it hereby is, requested to provide as the mode of ratification that said amendment shall be valid to all intents and purposes, as part of the constitution of the United States, when ratified by the legislatures of three-fourths of the several states; and be it further

Resolved, That the state secretary be, and he hereby is, directed to send a duly certified copy of this resolution to the senate of the United States and one to the house of representatives in the congress of the United States.

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MODERN ESTIMATES OF TWO "INFAMOUS" JUDGES AND THE LESSON OF THE REPUTATIONS OF JEFFREYS AND BRAXFIELD[1]

Frank W. Grinnell[2]

The Whig pictures of Jeffreys and others and the "Popish Plot" in the 17th century, and of Lord Braxfield and the Scotch sedition trials of the end of the 18th century, have been restudied by various men who have given us a more balanced picture of them and their background which helps us to get the history of the criminal law in perspective.

LORD BRAXFIELD

Robert McQueen, Lord Braxfield, was born in 1722, the grandson of a gardener of the Earl of Selkirk and the son of the Earl's baron-baillie. He became the leading counsel at the Scottish bar, was appointed to the bench in 1776, rather against his inclination, was promoted to the position of Lord Justice—Clerk—the Chief Criminal Judge in Scotland—in 1788, and presided at many of the sedition trials in Scotland at the time of the French Revolution. He died in 1799. Lord Cockburn, then a boy, and later a Scottish Whig who became a judge of the early nineteenth century, left us, in his "Memorials," this picture:

> "'But the giant of the Bench was Braxfield. His very name makes people start yet. Strong built and dark, with rough eyebrows, powerful eyes, threatening lips, and a low growling voice, he was like a formidable blacksmith. His accent and his dialect were exaggerated Scotch; his language, like his thoughts, short, strong, and conclusive. Illiterate and without any taste for refined enjoyment, strength of understanding, which gave him power without cultivation, only encouraged him to a more contemptuous disdain of all natures less coarse than his own.' With regard to his Lordship's conduct as a criminal judge, Cockburn describes it as a disgrace to the age, and says he was never so much in his element as when taunting some wretched culprit, and sending him to Botany Bay or the gallows with an insulting jest." [3]

Writing of the subject of the picture, on his bicentenary in 1922, William Roughead, a most readable author, tells us that of the several ways by which the eminence of a "bicentenary" may be attained:

> "there is one that surely leads to posthumous renown. . . . A high reputation for wickedness is an unfailing passport to immortality. . . . Whether you proudly reign with Ahab and Caligula, or take humbler rank with Bluebeard or the Tichborne claimant, the benefit of infamy is assured."
>
> "Something of this invidious fame has been conferred by Lord Cockburn upon Lord Braxfield. Cockburn was in no sense of the term a great judge, but he was a good man and a writer of much charm, so he justly enjoys wide popularity and his opinions are generally received. Braxfield, a rough diamond, inelegant of manner, broad, convivial,

[1] Read before the Massachusetts Historical Society.

[2] Editor of the Massachusetts Law Quarterly, 60 State St., Boston, Mass.

[3] "The Riddle of the Ruthvens and Other Studies," Roughead, p. 48.

LORD BRAXFIELD

(The portrait by Raeburn)—from an old print.

strong in mind as in body, humorous after the fashion of Ben Jonson, passionately patriotic, an inveterate Tory, and above all a great lawyer, was the full-blooded son of the Eighteenth Century. Cockburn, well bred, urbane, fastidious, physically slight, a resolute Whig of the Reform brand, and, both intellectually and professionally, less distinguished than the other, was a child of the new era. Had they met as men—for Cockburn was a boy when Braxford died—my Lord might conceivably have called his learned colleague a 'daam'd auld wife'; Cockburn's retort, if more genteelly phrased, would have been none the less unflattering. But they never did so meet, for Cockburn was not admitted to the Bar till the Justice-Clerk was in his grave, and the forbidding portrait of 'the Jeffreys of Scotland' in the *Memorials* is painted by a partisan brush with other people's colours. . . .

"In this age of compromise and coalition we can hardly conceive the inflammatory effect upon our forebears of divergent political views. The Scot of those days regarded differences in politics and doctrine as equally vital, and imported into the one a bitterness more properly reserved for the other. Cockburn, in writing his *ex parte* account of the sedition trials, says that he recognised the duty of never letting Braxfield and the years 1793 and 1794 be forgotten,' and that he only refrained from publishing it in his lifetime out of consideration for the feelings of the other judges' relatives (a). His endeavour thus to perpetuate the memory of 'this coarse and dexterous ruffian,' a singular labour of love, might have failed of its purpose. Fortunately for Lord Braxfield's fame there was exhibited at Edinburgh one autumn in the 'seventies a collection of paintings by Sir Henry Raeburn, into which a certain young advocate,[4] with nothing better to do, found his way. The half-length of Robert M'Queen of Braxfield irresistibly attracted him; the result was the delightful sketch in *Some Portraits by Raeburn*, and the living picture in *Weir of Hermiston*."** . . .

"In pronouncing moral judgment on the great figures of history the mistake is often made of applying our modern standards to their so different conditions. . . .

"Those who condemn Lord Braxfield as a corpulent and foul-mouthed old pagan—'his religion railing and his discourse ribaldry'—are strangely ignorant or forgetful of the manners of eighteenth-century Edinburgh. Everybody drank too much, swore too hard, laughed at everything, believed in little, and blushed at nothing. But one thing Lord Braxfield did do, faithfully, with a single eye and an undivided heart—his duty. It was a corrupt age, most officials had their price, and he was above suspicion; it was a self-indulgent age, and he wrought late and early at what work was given him to do; it was a naughty age, and he was a good husband, an affectionate father, a loyal friend, and he left to his children the heritage of his high reputation and an unstained name. If he sat too long over the decanters, and if the raciness of his humour was inordinately pronounced, these were foibles which many of his contemporaries, honourable and upright men, were content to share. His critics may be more nice of speech and less robust of stomach, but most of them would be all the better for some of his Lordship's brains."

Why was such a man referred to as "the Jeffreys of Scotland"? Because his terrifying manner of conducting criminal trials (even of guilty persons) in a hanging age of political ferment gave a "sinister conception of the trial judge" which, as Pound tells us, was brought to this country by the large number of Scotch emigrants (widows, relatives, friends and neighbors of Braxfield's victims) at the beginning of the

[4] "Glengarry's Way and Other Studies," William Roughead (pp. 277 df. 297-8).

(a) "Examination of Trials for Sedition in Scotland," Edinburgh, 1888, i. 87.

nineteenth century, and thus contributed to a popular distrust of powerful judges in the criminal courts. The "quality of mercy" had begun its modern influence.[5]

"THE BLOODY JEFFREYS"

Turning back a century—Sir George Jeffreys, in the short space of forty years, was born, became a sergeant at law, Recorder of London, Lord Chief Justice of England and Lord Chancellor, and died in the Tower a great sufferer from the stone at the age of forty, after the abdication of James II, leaving a reputation as the most infamous judge in English history. This reputation also crossed the ocean, not only in the minds of English emigrants in large numbers, but in English literature during the rise of the Whigs in the generations following the Revolution of 1688. The most widely read accounts of this extraordinary young man are those of Lord Campbell and of Macaulay, especially. Macaulay begins his picture (in the fourth volume of his "History") as follows:

> "The depravity of this man has passed into a proverb. Both the great English parties have attacked his memory with emulous violence; for the Whigs considered him as their most barbarous enemy; and the Tories found it convenient to throw on him the blame of all the crimes which had sullied their triumph. A diligent and candid inquiry will show that some frightful stories which have been told concerning him are false or exaggerated. Yet the dispassionate historian will be able to make very little deduction from the vast mass of infamy with which the memory of the wicked judge has been loaded.
>
> "He was a man of quick and vigorous parts, but constitutionally prone to insolence and to the angry passions. . . .
>
> "he became the most consummate bully ever known in his profession. Tenderness for others and respect for himself were feelings alike unknown to him. He acquired a boundless command of the rhetoric in which the vulgar express hatred and contempt. The profusion of maledictions and vituperative epithets which composed his vocabulary could hardly have been rivaled in the fish-market or the bear-garden. His countenance and his voice must always have been unamiable. But these natural advantages—for such he seems to have thought them—he had improved to such a degree there were few who, in his paroxysms of rage, could see or hear him without emotion. Impudence and ferocity sat upon his brow. The glare of his eyes had a fascination for the unhappy victim on whom they were fixed. Yet his brow and his eyes were less terrible than the savage lines of his mouth. His yell of fury, as was said by one who had often heard it, sounded like the thunder of the judgment-day. These qualifications he carried, while still a young man, from the bar to the bench. . . .
>
> "As a judge at the City Sessions he exhibited the same propensities which afterward, in a higher post, gained for him an unenviable immortality. Already might be remarked in him the most odious vice which is incident to human nature, a delight in misery merely as misery. There was a fiendish exultation in the way in which he pronounced sentence on offenders. Their weeping and imploring seemed to titillate him voluptuously; and he loved to scare them into fits by dilating with luxuriant amplification on all the details of what they were to suffer."[6]

[5] Compare "Probation as an Orthodox Common Law Practice in Massachusetts Prior to the Statutory System," Mass. Law Quart. for Aug., 1917, 591.

[6] "Selections from Macaulay," Trevelyan (pp. 181-2).

"THE BLOODY JEFFREYS"

When the flight of James II became known, Jeffreys, who had concealed himself in Wapping, while he waited for a ship to carry him to France, was discovered and treated so severely that the lord-mayor, in order to prevent his being torn to pieces, was obliged to send him to the Tower.—Russell's "History of England" (1783), page 534.

The somewhat inaccurate details and the impressionist picture which follow this introduction have been questioned, or corrected, by the studies of H. B. Irving, John Pollock, Henry Mudiman and others, but Judge Parry writing one of the latest accounts of him, in his history of the "Bloody Assizes," published in 1929, thinks he deserved his reputation, saying:

> "A great deal has been done to deodorize the memory of Jeffreys, and if it were possible to write his biography without reference to the Bloody Assize and other criminal trials, in which his lust of cruelty overpowered his common sense, some kind of entertaining inoffensive portrait might be made of a clever, self-seeking lawyer climbing to the top of an exceedingly slimy pole.
>
> "H. B. Irving's apologia for the life of Jeffreys is a classic. It will never be better done. But reading the essay carefully again, I feel that in smoothing out the wrinkles of rascality he leaves his hero insipid and wanting in character. Jeffreys, to be true to life, must be as bloody as Macbeth without his infirmity of purpose. The attempt to canonize him was bound to fail, and in the end you cannot see the saint for the whitewash."[7]

H. B. Irving's purpose, however, was not to "canonize" Jeffreys, but to reduce him to a more human villain of less abnormal proportions who, with some of his predecessors and contemporary judicial colleagues, typified the beginning of the end of a brilliant, self-indulgent, brutal and corrupt political and social era which reeked with revolution, perjury, prejudice, credulity and fanaticism. In that era a judge (with rare exceptions like Sir Matthew Hale) was, generally, expected to be, not an impartial officer, but an arm of the Crown, combining in one man in varying degrees, the functions of police chief, prosecutor and judge, to carry on proceedings and impose penalties which seem to us to-day diabolical in their nature, but which reflected the "mores," religious, social, and political, of seventeenth century England. Jeffreys and his associates were typical products of conditions and not isolated fiendish historical mavericks. And most of them were men of ability, especially Jeffreys, for a man who died at the age of forty could not have had such a career, even in that era of corruption, without ability. Dean Pound, in an address[8] to the bar of South Dakota a few years ago, said of him:

> "I well remember the shock when as a first-year student of law I came upon a decision of Jeffreys as Chancellor in a collection of authorities on the law of Property. With my mind full of Macaulay's invective, it seemed incredible that what such a man may have decided could possibly deserve or have any authority. Later when I had to teach the law of Trusts, and hence was led to study the old equity decisions, I was astonished to find how well Jeffrey's decisions as Chancellor had maintained themselves. I was amazed to find how much more he counted in the reports which have made our law than Somers, who is, next to William III, the hero of Maucaulay's history. Still later I had to look into seventeenth-century procedure in connection with the movement at the beginning of the present century to overhaul the procedure of American courts. Here, too, I noted with astonishment that more than one procedural crudity of Matthew Hale, who is one of Campbell's heroes, did not obtain under Jeffreys. . . . What-

[7] "The Bloody Assize," Sir Edward Parry (p. 38).

[8] The American Attitude Toward the Trial Judge.

ever else he may have been, the law books show clearly enough that Jeffreys was a lawyer—indeed was no ordinary lawyer. . . .

" . . . however, when Jeffreys was on the bench, the memory of the Long Parliament and the Commonwealth was green. Men then living remembered how Whiggery and non-conformity had plunged the nation into civil war, had executed a king, had suspended Magna Charta, and had set up a military despotism. When Jeffreys at the trial of Baxter said that a Presbyterian was 'as full of treason as an egg is of meat,' shocking as that sounds to us now, he said simply what every loyal adherent of the Restoration felt deeply to be the truth.

"Such is the background of Jeffreys. He lived and judged in a period of transition from an old England to a new."

The background of the popular excitment and of the administration of the law of treason in England between 1670-1688 appears also in John Pollock's book on "The Popish Plot," which was published in 1903.

Inspired, as he indicates in her preface, by the example and suggestions of Lord Acton, the eminent historian and leading Catholic layman in late Victorian England, he endeavors to steer his way between the lies of Titus Oates and others. He produces long-buried information from papers in the British Museum and elsewhere. He analyzes, and marshals, the facts as to the three-hundred-year-old mystery story of Godfrey's murder the various "plots" and the long contest between Whigs, Tories, Catholics, Anglicans, Dissenters, Charles II., James II., the Earl of Shaftsbury, and Louis XIV, who were all mixed up together in the drama which was presented from the Stuart point of view in 1681, at the request of Charles II, by John Dryden, the poet laureate, in "Absalom and Achitophel." In Dryden's poem Monmouth appears in the role of Absalom, Shaftsbury as Achitophel, and Charles as David. Pollock says:

"The trials of the Popish Plot have remained the most celebrated in the annals of our judicial history. Their reports occupy three volumes of the State Trials and more than two thousand pages of crowded print. They contain twenty-two trials for treason, three for murder or attempt to murder, eleven for perjury, subornation of perjury, libel, and other misdemeanours. They gave rise to proceedings in Parliament against two Lord Chief Justices, and against two judges of the Court of King's Bench. They are a standing monument to the most astounding outburst of successful perjury which has occurred in modern times. It is due to their connection with these trials that posterity has branded the names of three judges with lasting infamy, and that fourteen men executed as traitors have earned the reputation of martyrs. Not only are they filled and brimming with the romance of life and death, but there lies locked within them the kernel of that vast mass of treason, intrigue, crime, and falsehood which surrounds and is known as the Popish Plot. Strangely enough, therefore, they have been little studied and never understood. To appreciate properly the significance of the trials they must not be taken apart from their setting, and it is necessary before pasing judgment upon the events recorded in them to review the past which lies behind them and the causes which influenced their nature. . . .

"Throughout the sixteenth and seventeenth centuries, from the time when Henry VIII broke the political power of Rome in England until the day when the last revolution destroyed the influence of the Jesuits in English politics, the English state lived and developed in an atmosphere charged with

the thunderstorm and resonant with the note of war. War against foes within the land and without was the characteristic condition of its existence. Besides conflict with foreign powers, war and rebellion, constant in Scotland and almost chronic in Ireland, may be counted, in eight reigns, three completed revolutions, ten armed rebellions, two great civil wars, and plots innumerable, all emanating from within the English nation alone. From beyond seas enemies schemed, almost without ceasing, to overturn religion or government or both as they were established at home. There is no need to wonder that the English government was a fighting machine. In this light it was regarded by all men. Where government is now looked on as a means of getting necessary business done, of ameliorating conditions of life, and directing the energy of the country to the highest pitch of efficiency, two centuries and a half ago it was anxiously watched as an engine of attack or defence of persons, property, and conscience. . . .

"To be 'counted to be a very pernicious man against the government' was sufficient to weigh against the credibility of a witness before the highest tribunal of the kingdom.

"The only practicable instrument of government for the defense of the state was the judicial system of the country. As there was no method known for the prevention of crime by an organised force of police, and no deterrent exerted on would-be criminals by the existence of a standing body of soldiery, the only possible weapon to be used against them was to be found in the law courts. It followed that the judges and justices of the peace, not only fulfilled the judicial and magisterial functions which are known to modern times, but constituted as well an active arm of the administration. . . .

"The justices were able administrators, dealers of small mercy to the evildoer, guardians of the peace in the name of which their commissions ran; but the judges took a place in the foremost rank as great officers of state. The character of their office had been determined by the famous conflict between James I and Lord Chief Justice Coke which came to a head in 1616 and ended in Coke's dismissal. . . .

"The Lord Chief Justice, 'toughest of men,' and too stubborn to yield, was broken; but his brethren on the bench gave way and offered assurances of their good conduct for the future and of their devotion to the royal will. James took the opportunity of the lecture which he read to the judges in the star chamber to compare their behaviour in meddling with the prerogative of the crown to the atheism and blasphemy committed by good Christians in disputing the word of God.

"Thus the judges became, according to Bacon's wish, 'lions, but yet lions under the throne,' and carried themselves very circumspectly not to 'check or oppose any points of sovereignty.' Of their regularity in this course there can be no doubt, for if any lapsed into forbidden ways, a judge he speedily ceased to be. . . .

"Theoretically, the court was 'of counsel for the prisoner' in matters of law; and practically, as this conflicted with the judges' duty to the king and their watch over his life, the prisoner was allowed to shift for himself." . . .

Aside from the provision of tenure, during good behavior, of the judges in 1701

> "the new system has emerged from the old by a procession of unconsidered changes, at different times, of varying importance, the results of which have come to be so universally known and approved, that to the backward glance they seem to be, not the outcome of long experience, but inextricable parts of a system which has existed from all time. The essential change has been *one of conduct* less than of opinion, and is to be found rather in an altered point of view than in any variation of practical arrangements. . . ."

The vehement partisanship of Jeffreys created a reputation for a trial

judge as a partisan monster which, as Pound said, was brought to this country by Monmouth's contemporaries just at the time that American courts were beginning to develop.

As the manners and personalities of strong men on the bench in the trials of persons, most of whom were guilty according to the law as it then was, in a period of brutality, shocked and obscured the popular ideas of justice in England, so we had their prototypes, to some extent, in America, not only in some colonial judges, but after the Revolution. The behavior of the stout old patriot, Samuel Chase, of Maryland, and other Federal judges who presided at trials under the "alien and sedition" acts, contributed to the Jeffersonian reaction. Pound draws the lesson from "the aftermath of these strong judges."

". . . in the lax criminal law of the nineteenth century, which has given us much trouble in the present generation, in the elective judiciary, and loss of judicial independence, in legislative turning of trial judges into moderators, and in codes of procedure which bind the trial judges hard and fast.

"There is a lesson for us here when we are inclined to applaud judicial and magisterial overriding of individual claims, to set aside legal and constitutional guarantees, and to wink at invasions of private rights in the supposed interest of law and order. The reaction from these things may presently undo more than the suppressed disturbers possibly could have shaken or thrown down.

"There is no time when it is so important that justice be administered judicially, and when it is so unlikely to be administered judicially, as in times of political and economic excitement in an era of transition. The *excessive* zeal of the strong conservative judge in such an era is one of the most certain agencies of bringing about radical changes."

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HENRY N. SHELDON

Justice Superior Court of Massachusetts, 1894-1905
Justice Supreme Judicial Court, 1905-1915

A MODERN STANDARD FOR THE JUDICIAL BEHAVIOR OF A TRIAL JUDGE

A Sequel to the Lesson of the Behavior of Jeffreys and Braxfield

Sir John Holt, appointed Lord Chief Justice of the King's Bench in 1689, who served for twenty-one years, and was the first judge to serve with tenure "during good behavior." (under the Act of Settlement of 1701) instead of "during the pleasure of the King," marked the change from the old order. Lord Campbell said of him, that he was "the model on which, in England, the judicial character has been formed." And Foss, the historian of the judges says, "In him may be fixed the commencement of a new era of judicial purity and freedom, marked with that . . . exemption from extraneous influences which has, with few exceptions, ever since distinguished the bench." (See Holdsworth, "Some Makers of English Law," Chap. VIII.).

In 1764, in his paper on "The Rights of the British Colonies," James Otis said:

"Men cannot live apart or independent of

each other . . . and yet they cannot live together without contests. These contests require some arbitrator to determine them. The necessity of a common, indifferent and impartial judge, makes all men seek one."

In the movement for a constitution in Massachusetts, beginning in 1776, the "dirt" farmers of Berkshire County, led by a country parson with a power of statement—Thomas Allen, refused to let the courts sit in the county for six years until a constitution and bill of rights were adopted "as the basis and ground work of legislation." Their reasons were stated in the Pittsfield petitions to the General Court of 1776 and 1778 in which they explained that

> "Every man by nature has the seeds of tyranny deeply implanted within him, so that nothing short of Omnipotence can eradicate them. . . .
>
> "That knowing the strong bias of human nature to tyranny and despotism, we have nothing else in view, but to provide for posterity against the wanton exercise of power, which cannot otherwise be done than by the formation of a fundamental constitution."

In his "Thoughts on Government" in 1776 John Adams quoted from one of Milton's sonnets,

> "I did but prompt the age to quit their clogs
> By the known rules of ancient liberty."

John Adams was a very practical, long-range thinker in a crisis, in spite of all his peculiarities, and he knew, what is proving to be true today, that, sooner or later, people would forget the history and basis of their rights and their duties. Accordingly it was not mere 18th Century rhetoric, but a very practical anticipation, which he embodied in the generally overlooked 18th Article of the Massachusetts Bill of Rights, as follows:

> "ARTICLE XVIII. A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, *justice*, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives: *and they have a right to require of their* lawgivers and *magistrates* an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the commonwealth."

The "fundamental principle" of "justice" referred to was also explained for posterity in the 29th Article as follows:

> "XXIX. It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by *judges as free, impartial, and independent as the lot of humanity will admit.* It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws."

In 1806, Theophilus Parsons was appointed Chief Justice, without notice, and persuaded to accept at a sacrifice of more than half of his income. In the six years before his death in 1813, he started the modern administration of justice in Massachusetts (See 2 *Mass. Law Quart.* No. 5, May, 1917, p. 519, and "Memoir of Parsons" by his son).

In the "Memoir" of him his son, Professor Theophilus Parsons, said (at p. 199):

"I believe there was nothing which my father more desired than that the people should cultivate in themselves a kind and respectful, but watchful jealousy of the judicial department; and should feel a deep and sincere, and yet a rational respect for it, founded upon a just understanding of the vast importance of its functions. And that the people might so feel, the very first and most essential cause must be, that the judicial department should *deserve* to be so regarded. He wished that the people should see and know, clearly and certainly, the utility of the judiciary *to them;* and that they should know as clearly the means by which their utility might be secured and preserved."

In 1894, Henry N. Sheldon, the first scholar in the Harvard Class of 1863, was appointed a judge of the Superior Court of Massachusetts by Governor Greenhalge. He served on that trial court for ten years, and then for ten years more as an associate justice of the Supreme Judicial Court, to which he was promoted in 1905.

At the memorial exercises after his death in 1926, the late Thomas W. Proctor, a lawyer of long experience in the trial courts, before Judge Sheldon and other justices, said of him:

> "His minute book had 'Patience, patience,' written at the top of every page. . . . He took care of the loser. The verdict, the finding, the decision, take care of the winner. I have sometimes thought that the important party to the litigation is the loser. If, as he leaves the court defeated, he is forced to feel that his cause has received all the consideration that there could be for it, we need have no fear for our courts of justice. In this, I think Judge Sheldon succeeded as well as any man." 257 Mass. 603.

This story of a principle of justice and some of its products deserves the attention of every judge and of every selecting power in these days when judges like Sheldon are needed on every court, and, especially, in the trial courts which represent justice, or its injustice, in action, to more people.

F. W. G.

HOUSE . . . . . No. 600

The Commonwealth of Massachusetts

REPORT OF THE SPECIAL COMMISSION ESTABLISHED TO MAKE AN INVESTIGATION AND STUDY OF THE JUVENILE COURT SYSTEM OF THE COMMONWEALTH.

[The Judiciary.]

BOSTON, December 4, 1940.

To the Honorable Senate and House of Representatives.

PURPOSES OF COMMISSION.

The commission was created by chapter 43 of the Resolves of 1939, which reads as follows:

Resolved, That a special unpaid commission, consisting of one member of the senate to be designated by the president thereof, three members of the house of representatives to be designated by the speaker thereof and three persons to be appointed by the governor, with the advice and consent of the council, is hereby established for the purpose of making an investigation and study of so much of the governor's address, printed as current senate document numbered one, as relates to the operation and extension of the juvenile court system of the commonwealth, with a view to recommending such changes in said system as it may deem necessary or desirable. Said commission may expend for expenses and clerical and other assistance such sums, not exceeding, in the aggregate, two thousand dollars, as may hereafter be appropriated. Said commission shall report to the general court the results of its investigation and study, and its recommendations, if any, together with drafts of legislation necessary to carry such recommendations into effect, by filing the same with the clerk of the house of representatives on or before the first Wednesday of December in the year nineteen hundred and forty.

Approved August 3, 1939.

Commission Personnel.

In accordance with the resolve, President Cotton of the Senate appointed Senator John D. Mackay of Quincy. Speaker Herter of the House appointed Representatives William R. Gilman of Malden, Theodore P. Hollis of Stoneham, and Thomas J. Hannon, Jr., of Dorchester. Governor Saltonstall appointed Judge Thomas H. Connelly of the Brighton District Court, Judge John F. Perkins of the Boston Juvenile Court, and Miss Marenda E. Prentis of Boston. The Commission met and organized October 10, 1939, by electing Senator Mackay chairman and Representative Gilman vice-chairman.

Proceedings.

The Commission held hearings publicly each week through the autumn, winter and spring until July 11, 1940, at the State House in Boston, and in other large cities. It sent a subcommittee of three members to Washington to confer with officials of the United States Children's Bureau. Visits were made by the Commission to our State's correctional schools. At the hearings the Commission received testimony from representatives of welfare and social agencies, judges of the district courts, probation officers, agents of the Division of Child Guardianship, clergymen, the Commissioner of Mental Health, specialists in the field of juvenile delinquency, legislators, the Division of Juvenile Training, the Board of Probation, and members of the general public interested in the study. It also received reports from organizations and committees which had made special studies of the problem.

General Considerations.

The Commission approached the study in the belief that rehabilitation of the lawbreaker is the most effective form of law enforcement, for through rehabilitation the lawbreaker ceases to be a problem. It is therefore a primary objective to be kept constantly in mind by those who make

the laws and those who administer them. The principle of rehabilitation applies to all lawbreakers, whether adult or juvenile, and although difference in method may be needed, owing to difference in age and development, the corrective principle should control the method selected whenever this is not incompatible with the protection of the community.

The Commission also wishes to clear up a confusion which apparently exists in the minds of many people regarding the relative functions of the Legislature and the courts. The Legislature makes the laws. The courts administer them. They are separate and independent branches of government. It is the duty of the Legislature to pass well-conceived clearly defined laws. It is the duty of the courts to administer them according to their letter and spirit. In all administrative work the quality of the work varies with the quality of the individuals performing it, and a fault in administration should not be interpreted as a fault of the law. This distinction apparently was not understood by some of those who appeared before the Commission and seemed to feel that this body had administrative power. It has not. It is a legislative Commission, and neither it nor the Legislature has power to appoint the judges or to supervise or control the manner in which the courts do their work.

The increasing interest manifested by organizations and the general public in the causes and cures of juvenile delinquency and waywardness is most gratifying. It is bound to generate an enlightened public opinion which in turn will serve to stimulate faithfulness and diligence on the part of those entrusted with the administration of the laws which have as their concern prevention and rehabilitation.

The System.

In Massachusetts there are 72 district courts, each under an independent presiding judge. Sessions for juvenile cases are held in each of these district courts when juvenile cases occur. In Boston there is the Boston Juvenile Court set up by special statute and devoted exclusively to juvenile

cases. While all are independent there is an effort to co-ordinate them through the existence of the Administrative Committee of the District Courts, such co-ordination having as its objective the pooling of experience and the development of uniform standards.

A survey of these courts, all but 20 of which have fewer than 100 juvenile cases a year, discloses that there is a trend toward uniformity in the three major steps in dealing with juveniles.

(*a*) *Procedure.*

Complaints come from families, neighbors, schools, social agencies and the police. The common practice is for the clerk to examine the application for complaint before any formal action is instituted, and in many courts no process is issued until the presiding judge, or the special judge designated to sit on juvenile cases, has studied the circumstances. In a number of the courts the judge has his probation officer investigate the complaint, and try to correct the difficulty without recourse to formal action.

When a complaint is approved, a warrant is rarely issued. The law provides that summonses shall be issued in all cases of children under fourteen, and in all other cases unless the court has reason to believe that the child will not appear if summoned.

When a child is arrested, he is ordinarily detained in the office of the police station and not placed in a cell except under unusual circumstances. The probation officer and the parent or guardian are at once notified, and in almost all cases the probation officer has the child released to his parents or guardian. If, because of special conditions, the police officer who made the arrest requests in writing that the child be detained, he may be kept in the station. This rarely happens. In short, in all but exceptional cases the children are released to their homes, and in all cases where arrests are made the child is brought before the court on the day of the arrest, or the next morning.

Where the arrested child is a runaway, or his home is unsuitable for him to return to, some courts have the services of a temporary home provided by private agencies,

and the probation officer can place the child there over night. Unfortunately these facilities are not available to all the courts, with the result that in some instances, although not many, a child has to be detained in the station when it would be better to place him somewhere else. This, however, is not necessary for more than one night, as the child upon arraignment the next morning can be placed in the care of the Division of Child Guardianship pending hearing and disposition.

(*b*) *Hearing.*

The Commission has found that in virtually all our district courts the juvenile cases are heard exclusively by the presiding judge, or by a special justice designated to hear all juvenile cases. The following steps are taken to protect the child. Children awaiting trial in the courthouse are kept apart from adults, and, where possible, there is a separate entrance to the juvenile session. The hearing is private and informal. In addition to the necessary officials and witnesses the only persons allowed to attend are present for the protection and assistance of the child. These include the child's parents, or a person acting in that capacity of relationship, and a visitor from the State Division of Child Guardianship.

The Commission has found there is a minimum of delay in holding a hearing. The practice is to conduct a hearing within a week after a complaint has been approved by the court. Previous to the hearing, for the guidance of the court, the probation officer investigates the child's history and background. The number of cases dealt with by the probation officers without recourse to hearing before the court is steadily increasing.

(*c*) *Disposition.*

This is the most important step in the process. The Commission has found that the courts seek to determine the proper treatment, with rehabilitation rather than punishment their aim. An increasing tendency obtains to

continue a case without finding in order to spare the child a record. In determining the disposition and treatment, the courts necessarily have to rely on the recommendations of the probation officers, and in deciding upon such recommendations the probation officers are coming more and more to consult with the schools, churches, guidance centers and other social agencies.

Probation is the child's opportunity for rehabilitation without disturbing normal life; and the quality and the skill of probation officers are therefore of utmost importance. Nothing has presented itself as more vital to the system than wise probation work.

The Commission has found that the foster home, both public and private, is being used increasingly by the courts, and is found to be a valuable aid in cases where the child's home is unsuitable or ineffective, and commitment to the training schools is not needed. In this way the child gets the benefit of family life and guidance which has been lacking in his home. Evidence submitted showed, however, that it is not easy to secure suitable foster homes willing to accept juvenile delinquents.

Our training schools provide a necessary and valuable agency for the courts to use in the program of rehabilitation. The Commission has visited and found these schools to be doing admirable work. Significant in this study of the courts is the fact that a comparatively small percentage of the juvenile offenders before our courts each year are committed to these schools.

Extent of Problem.

In recent years, because of widespread publicity, great interest has been created in the subject of juvenile delinquency. To allay alarm, the Commission calls attention to the fact that records do not indicate that juvenile delinquency is increasing. On the contrary, they indicate that it is decreasing.

Over a ten-year period the number of complaints show the following downward trends:

Court.	1940.	1939.
Roxbury	619	612
Dorchester	334	259
West Roxbury	80	138
East Boston	710	470
South Boston	280	186
Brighton	150	61
Charlestown	267	157
Chelsea	418	194
Boston Juvenile	826	377
Totals	3,693	2,454
All other courts	6,406	4,193
Grand totals	10,099	6,647

This downward trend is not merely local, it also obtains throughout the country. Statistics of the United States Children's Bureau covering juvenile delinquency indicate that youthful delinquents appearing in the 28 juvenile courts that report annually to the Bureau have decreased steadily in number from 1929 to 1938. There has been a reduction of 18.8 per cent in the nine-year period. The figures: in 1929, 36,902 cases; in 1938, 29,971 cases. The Bureau noted that the decrease occurred during a period that included a widespread economic depression.

Many reasons have been advanced. None seems conclusive, all appear contributory. They include: restricted immigration; unemployment resulting in more supervision by parents; smaller families (average family in 1890 included 5 members; for 1940 the figure is 4.2); decreased school enrollment (in Boston enrollment in 1934 was 138,000; in 1940, 125,000); "screening out" of cases that come before the judicial authorities; fewer patrolmen walking routes, resulting in less detection of offences.

In addition to these factors the Commission believes that the excellent work done by the social agencies has had a powerful influence in improving conditions.

Probation.

Probation work has been held by witnesses before the Commission to be indispensable to good operation of our juvenile courts. It is the chief aid toward rehabilitation. At present there are 31 full-time probation officers attached to our juvenile systems. Witnesses and the Commission members have felt that for the present the greatest contribution that could be made to improve the system would be an increase in the number of full-time juvenile probation officers.

The Commission has been impressed by the work of the Administrative Committee of the District Courts in raising the standards for probation officers. No probation officer who does not fulfill the requirements set by the committee may now be appointed by the courts. This provides a salutary and effective check which the Commission desires to note because its existence is not generally known. It is, of course, of the highest importance that the courts select for probation work only the best qualified persons obtainable.

Major Recommendations.

The Commission has considered carefully all of the testimony and data in regard to proposals for extension of the juvenile court system. The juvenile system is already state-wide in its extent, although there is frequently misconception and misunderstanding of this fact, due, perhaps, to the fact that only one court in Massachusetts is named "Juvenile Court."

The Commission strongly feels the system can be improved by an increase in the number of full-time juvenile probation officers, believing this to be the most valuable improvement that can be effected for the present.

Because of the fact that many of our district courts holding juvenile sessions have not enough cases annually to warrant the employment of a full-time juvenile probation officer, the Commission recommends that such courts shall be grouped, and each group shall have the services of a full-time juvenile probation officer, the grouping of the

courts for this purpose to be determined by the Administrative Committee of the District Courts. The Commission recommends that the selection of such probation officers remain with the courts, but subject to approval by the Administrative Committee, and to approval of salary by the county commissioners. The existing statute under which the larger courts may obtain the services of additional probation officers is favored by the Commission.

All through the study and testimony appeared the need for additional institutional facilities for our delinquent feeble-minded and defective juveniles. Extension of such facilities is not within the province of the resolve creating this Commission. However, we strongly recommend to your honorable bodies that some action be taken to correct this situation, as the need of such facilities is grave and handicaps our courts in the proper disposition of such cases.

Other Conclusions.

1. The Commission recommends that the law relating to mental and physical examination in juvenile cases prior to commitment be amended so that the question whether such examination shall be made be left to the discretion of the judge.

The Commission has found that in many instances the examination under the existing law constitutes merely an irksome formality which has to be performed after the court has decided to order commitment.

This Commission has also found that if a judge wishes such an examination he has it made promptly, so that he may have the benefit of the information it provides, not merely in regard to the question of commitment but also in guiding the juvenile on probation.

The amendment we propose simply does away with an unnecessary formality.

2. The Commission recommends that a uniform method of statistical tabulation be established for the Boston Juvenile and the seventy-two district courts, so that records will be based on the number of individuals involved and not the number of cases; the same to apply to appeals;

uniformity in commitment papers, and other routine documents pertaining to the juvenile court system.

3. The Commission recommends that any juvenile offender placed on probation by the Superior Court be placed under the supervision of the district court probation officer in the jurisdiction where the juvenile has his residence.

4. The Commission recommends that the Administrative Committee of the District Courts (*a*) stress the importance of a presiding judge, designating the same special justice to hear all juvenile cases where the presiding judge himself does not conduct the juvenile session; (*b*) stress more general use of the law (General Laws, chapter 119, section 63), that authorizes the prosecution of parents who contribute to the delinquency or waywardness of their child; and (*c*) stress the value of a judge examining all complaints before institution of formal action.

Additional Findings.

During the course of the study many proposals of changes and ideas on phases of the study were received by the Commission. These were studied and conclusions were reached by the Commission members. Without making any recommendations, the Commission believes it may be of public service to state its conclusions on some of these.

1. A central classification bureau has been proposed to which adjudged delinquents would be sent for a determination of treatment, classification, etc. The Commission does not favor this proposal.

2. It has been proposed to abolish the right of appeal in juvenile cases. The Commission favors retention of this right, although it is not frequently exercised.

3. Whether a judge conducting a juvenile session should wear a robe or not was a subject of discussion. The Commission believes that the robe is a valuable symbol which helps a child to realize that the judge is not acting in a personal capacity but as a representative of the Commonwealth, and that it in no way impairs the friendliness and informality of the hearing. We believe the judges should wear their robes in juvenile sessions.

4. The Commission received much evidence to indicate that when patrolmen covered their routes on foot instead of in squad cars they had a better insight into the problems of the neighborhood. The Commission feels strongly that an increase in the number of foot patrolmen would result in further prevention or detection of delinquency and crime.

5. The schools provide an excellent opportunity to observe the behavior of children. The Commission feels that much could be done for prevention and rehabilitation if the schools, in co-operation with the homes, were more systematic in their efforts to detect and study early symptoms of irregular behavior in school children.

6. Many ideas with regard to predelinquent treatment were brought to the Commission's attention. Prevention of delinquency is definitely a community problem, and therefore the resources of the community should be effectually utilized. The home, the church and the school should provide proper training, and the community facilities, for wholesome recreation. Where these fail the social agencies must bring to bear supplementary assistance, and in such cases the best prevention of delinquency lies in the adequacy of these social agencies. We are happy to find that this idea has taken root in the public mind and is bearing good fruit.

Respectfully submitted,

JOHN D. MACKAY,
Chairman.

WM. R. GILMAN,
Vice-Chairman.

THOMAS J. HANNON, JR.
JOHN F. PERKINS.
THOMAS H. CONNELLY.
MARENDA E. PRENTIS.
THEODORE P. HOLLIS.

PROPOSED LEGISLATION.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Forty-One.

AN ACT RELATIVE TO THE PLACING ON PROBATION OF JUVENILES BY THE SUPERIOR COURT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section eighty-seven of chapter two hundred and seventy-six of the General Laws is hereby amended by inserting after the word "felony" in the seventh line the words: — ; and provided, further, that in the case of any juvenile placed upon probation by the superior court, such juvenile may be placed in the care of a probation officer of the district court within the judicial district of which such juvenile resides, — so as to read as follows: — *Section 87.* The superior court may place upon probation under any of its probation officers any person before it charged with crime and any court may place any person convicted before it in the care of its probation officer for such time and upon such conditions as it deems proper; provided, that no person convicted of a felony by a district court shall be placed on probation by said court in such case if it shall appear that he has been previously convicted of any felony; and

provided, further, that in the case of any juvenile placed upon probation by the superior court, such juvenile may be placed in the care of a probation officer of the district court within the judicial district of which such juvenile resides, or the Boston juvenile court.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Forty-One.

AN ACT PROVIDING FOR THE APPOINTMENT OF PROBATION OFFICERS TO ACT EXCLUSIVELY IN JUVENILE CASES IN CERTAIN DISTRICT COURTS JOINING FOR THAT PURPOSE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter two hundred and seventy-six of the General Laws is hereby amended by inserting after section eighty-three the following new section: —

Section 83A. Such district courts within the same county as may be designated by the administrative committee of the district courts shall join in the appointment of a full-time probation officer to act exclusively in juvenile cases in the courts so joining. Each such probation officer shall be appointed by the justices of the courts so joining, with the written approval of said administrative committee, who shall consult the board of probation relative thereto; provided, that if a majority of said justices fail to agree in the selection of a person for appointment as such probation officer within a period of thirty days after such designation by said administrative committee, or after a vacancy in said office occurs, such appointment shall be made by said administrative committee, who shall consult said board of probation relative thereto. All officers ap-

pointed under this section shall be removable for cause by the justices of the courts for which such appointment was made; provided, that no such officer shall be removed or discharged from office unless such removal or discharge shall be approved in writing by said administrative committee after consultation with the board of probation relative thereto. The justices of the courts for which a probation officer is appointed under this section shall, subject to the approval of the county commissioners, fix the compensation of such officer.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Forty-One.

AN ACT RELATIVE TO MENTAL AND PHYSICAL EXAMINATIONS OF CHILDREN BEFORE BEING COMMITTED AS DELINQUENTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section fifty-eight A of chapter one hundred and nineteen of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by striking out, in the third line, the word "shall" and inserting in place thereof the word: — may, — and by striking out, in the fifth line, the word "diseases" and inserting in place thereof the word: — health, — so as to read as follows: — *Section 58A*. Prior to the commitment, by way of final disposition to any public institution or to the department, of a child adjudged to be a delinquent child, the court may cause such child to receive thorough physical and mental examinations, under rules and regulations prescribed by the commissioner of mental health. The court shall cause copies of the reports showing the results of such examinations and of the investigation made by the probation officer to be forwarded to the superintendent of the institution to which such child is committed or to the department, as the case may be, with the warrant of commitment.